STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED April 26, 2012
v	No. 303426 Kent Circuit Court
CONTRAIL YVETTE STONE, Defendant-Appellant.	LC No. 09-010641-FH

Before: METER, P.J., and SERVITTO and STEPHENS, JJ.

PER CURIAM.

Defendant appeals as of right from her conviction by a jury of assault with intent to do great bodily harm less than murder, MCL 750.84. The trial court sentenced her as an habitual offender, fourth offense, MCL 769.12, to 6 to 30 years' imprisonment, with credit for 60 days served. We affirm.

Defendant first contends that she was denied her constitutional right to present a defense when the trial court erroneously excluded testimony concerning statements made by the victim immediately after the assault. Defendant argues that the proffered evidence was admissible under the excited utterance exception to the hearsay rule, MRE 803(2) and that, even if hearsay, the evidence should have been admitted because the exclusion of the evidence denied her of her constitutional right to present a defense. Defendant's argument that the evidence was admissible pursuant to MRE 803(2) was preserved for review and is reviewed for an abuse of discretion. *People v McDaniel*, 469 Mich 409, 412; 670 NW2d 659 (2003). Defendant failed to raise her constitutional argument before the trial court, and this unpreserved argument is reviewed for plain error affecting defendant's substantial rights. MRE 103(d); *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

"[A] criminal defendant has a state and federal constitutional right to present a defense." *People v Unger (On Remand)*, 278 Mich App 210, 250; 749 NW2d 272 (2008) (internal citation and quotation marks omitted). "However, an accused's right to present evidence in his defense is not absolute." *Id*. A defendant "must still comply with 'established rules of procedure and evidence designed to assure both fairness and reliability in the ascertainment of guilt and innocence.'" *People v Hayes*, 421 Mich 271, 279; 364 NW2d 635 (1984), quoting *Chambers v Mississippi*, 410 US 284, 302; 93 S Ct 1038; 35 L Ed 2d 297 (1973). A state's evidentiary rules "do not abridge an accused's right to present a defense so long as they are not 'arbitrary' or

'disproportionate to the purposes they are designed to serve.'" *United States v Scheffer*, 523 US 303, 308; 118 S Ct 1261; 140 L Ed 2d 413 (1998), quoting *Rock v Arkansas*, 483 US 44, 56; 107 S Ct 2704; 97 L Ed 2d 37 (1987). "[T]he exclusion of evidence [is] unconstitutionally arbitrary or disproportionate only where it has infringed upon a weighty interest of the accused." *Scheffer*, 523 US at 308.

As noted in *People v Barrett*, 480 Mich 125, 131; 747 NW2d 797 (2008), quoting MRE MRE 803(2), the excited utterance exception to the hearsay rule provides that "although hearsay, a statement will not be excluded by the hearsay rule if it is '[a] statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.'" There are three requirements for admission of a statement pursuant to the excited utterance exception: (1) "the statement must arise out of a startling event," (2) the statement "must be made before there has been time for contrivance or misrepresentation by the declarant," and (3) the statement "must relate to the circumstances of the startling event." *People v Kowalak (On Remand)*, 215 Mich App 554, 557; 546 NW2d 681 (1996).

In this case, the statements offered by defendant were made immediately after a startling event, the assault on the victim. See *People v Sykes*, 117 Mich App 117, 120-121; 323 NW2d 617 (1982). The evidence also showed that the victim was still under the stress of the event when the statements were made. A police officer testified that the victim was excited and upset and that he was trying to calm the victim down when the statements were made. However, the proffered statements, as summarized by the trial court, were that the victim was going to "kill that bitch" and that the victim "was going to seek revenge for the bitch that cut her." The trial court reasonably concluded that these statements did not pertain to the circumstances of the startling event, see *Kowalak*, 215 Mich App at 557, but instead related to future conduct. The statements did not provide information regarding the facts or circumstances of the assault like the statement at issue in *Sykes*, *id*. at 120 (wherein the declarant stated that he had shot his wife as the result of an argument), but instead threatened future action against defendant in retaliation for the assault. The trial court did not abuse its discretion in excluding the proffered testimony.

We also find that the exclusion of the proffered testimony did not deprive defendant of her constitutional right to present a defense. Although this Court has acknowledged that, in some circumstances, "even hearsay is admissible when critical to a defense," *People v Herndon*, 246 Mich App 371, 411; 633 NW2d 376 (2001), the proffered statements in this case were not critical to defendant's self-defense claim. At most, the victim's statements demonstrated her anger and desire to hurt defendant *after* the altercation took place. Further, there is no likelihood that the exclusion of the proffered statements denied defendant a fair trial because defendant was able to present her claim of self-defense to the jury through other means, including by cross-examining the victim about the statements. Defendant questioned the victim about the substance of the statements and the victim admitted that she probably made the statements. Defendant also cross-examined the prosecution witnesses about the circumstances of the altercation, called defense witnesses, introduced photographs of the crime scene, and testified on her own behalf, providing the jury with her version of the events. Because defendant was able to fully present her defense to the jury, her constitutional right to present a defense was not infringed. There was no plain error. See *id*. at 411 (finding no likelihood that the trial court's exclusion of the defendant's proffered evidence denied the defendant a fair trial because the defendant "was able to present to the jury his theory that another inmate killed [the victim]").

Defendant next asserts that the prosecution presented insufficient evidence to establish her intent to commit great bodily harm less than murder. A court reviewing the sufficiency of the evidence must view the evidence in the light most favorable to the prosecution and determine whether the evidence was sufficient to allow any rational trier of fact to find guilt beyond a reasonable doubt. *People v Hunter*, 466 Mich 1, 6; 643 NW2d 218 (2002). The determination regarding the weight and credibility of conflicting witness testimony is a question for the jury that this Court does not disturb on appeal. See *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992).

Assault with intent to commit great bodily harm is a specific intent crime that "requires proof of (1) an attempt or threat with force or violence to do corporal harm to another (an assault), and (2) an intent to do great bodily harm less than murder." *People v Parcha*, 227 Mich App 236, 239; 575 NW2d 316 (1997). "An actor's intent may be inferred from all of the facts and circumstances." *People v Fetterley*, 229 Mich App 511, 517-518; 583 NW2d 199 (1998). "Because of the difficulty of proving an actor's state of mind, minimal circumstantial evidence is sufficient." *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999).

Several witnesses testified that defendant attacked the victim, and evidence was presented that the victim sustained multiple cuts and stab wounds that required 464 stitches. While the victim did not see a weapon, another witness testified that she saw what appeared to be a knife in defendant's possession after the fight, and the victim's sister testified that she saw something shiny in defendant's hand during the fight. The victim's sister testified that she overheard defendant earlier that night state, "I'm slicin' bitches tonight." Also, another witness testified that immediately before defendant attacked the victim, defendant stated, "You the one I really want." Viewing the evidence in the light most favorable to the prosecution, a rational jury could have found that defendant attacked the victim, intentionally cutting her and stabbing her with a knife or other sharp weapon. Defendant's use of a weapon and the extensive wounds inflicted provided evidence of defendant's intent. See *People v Leach*, 114 Mich App 732, 735; 319 NW2d 652 (1982) (noting that "intent [can] be inferred from the act itself, the means employed and the manner employed"). This evidence, combined with the evidence of defendant's earlier threat and defendant's statement that the victim was the one she "really want[ed]", provided a sufficient basis from which a rational jury could have inferred that defendant intended to cause great bodily harm to the victim. See *People v Harrington*, 194 Mich App 424, 429-430; 487 NW2d 479 (1992) (finding sufficient evidence of the defendant's intent to commit great bodily harm when the defendant made prior threats against the victim, called out to the victim, and shot at the victim from 20 yards away).

Affirmed.

/s/ Patrick M. Meter
/s/ Deborah A. Servitto
/s/ Cynthia Diane Stephens